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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,277	11/14/2003	Minas Theodore Coronco	Q78501	7510

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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/712,277

Applicant(s)

CORONEO, MINAS THEODORE

Examiner

Melanie J. Hand

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

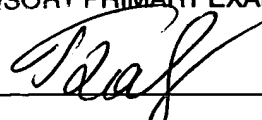
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



Continuation of 11. does NOT place the application in condition for allowance because: With respect to applicant's arguments regarding the prior art of Joseph, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the claimed device is located in its entirety in the suprachoroidal space) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 1 merely sets forth a foldable plate adaptable to locate the device in a suprachoroidal space formed by cyclodialysis, which would include both a tract and a tract opening as taught by Joseph, as both define a space formed by cyclodialysis. The device has a drainage tube that at one end opens into the anterior chamber, thus the claimed device in its entirety is not located in the suprachoroidal space. Further, as can be seen in Fig. 2, a portion of the tube 2 taught by Joseph does in fact enter the cyclodialysis tract 16 itself on its path toward the anterior chamber 15, thus a portion of the device of Joseph is also located a suprachoroidal space formed by cyclodialysis and thus, in combination with the prior art of Molteno, renders claim 1 unpatentable.

With respect to applicant's arguments in support of applicant's assertion that the device of Joseph neither is, nor can be, positioned in its entirety within a suprachoroidal space formed by cyclodialysis, Examiner states as a general matter that the suprachoroidal space is set forth as an entity which is created, a "potential space between the choroids and sclera", by cyclodialysis to effect free communication between the anterior chamber and the suprachoroidal space" (Specification, page 3, lines 13,14,19,21). The device of Joseph implicitly teaches a human eye, substantially identical in structure to an eye in which the claimed device is placed, altered at a later time by creating a cyclodialysis tract, a feature which, in addition to the suprachoroidal space, is not a natural structural feature of a human eye. The tract effects free communication between the anterior chamber 15 and the created suprachoroidal space, indicated generally by item 16 in Fig. 2. Therefore, since Joseph teaches a cyclodialysis tract, Joseph teaches a cyclodialysis procedure that forms a suprachoroidal space. The area indicated generally at tract 16 in Fig. 2 is a suprachoroidal space, and the prior art of the combined teaching of Joseph and Molteno meets all of the limitations of claim 1. Neither Joseph nor Examiner, in the process of applying the prior art of Joseph, has ever specifically stated that the device of Joseph is positioned in its entirety in the suprachoroidal space, nor is such a limitation claimed by applicant, though it appears that such positioning of the device as a whole within such suprachoroidal space is believed by applicant to be a point of novelty over the prior art of Joseph. Thus, the remainder of applicant's arguments are moot as they are directed to evidence attempting to prove a distinction between the prior art of Joseph and the claimed invention that is not claimed.